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HONEYWELL INTERNATIONAL INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

13 DEBORAH GETZ, et al.,

14 Plaintiffs,

15 v.

16 THE BOEING COMPANY, et al.,

17 Defendants.

Case No. CV 07-06396 CW

**DEFENDANT HONEYWELL
INTERNATIONAL INC.'S NOTICE
OF MOTION AND MOTION FOR
PROTECTIVE ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

18 Date: June 19, 2008

19 Time: 2:00 p.m.

Courtroom: 2

Judge: Hon. Claudia Wilken

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 19, 2008, at 2:00 p.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Claudia Wilken, United States District Court, Northern District of California, Oakland Division, Courtroom 2, 4th Floor, 1301 Clay Street, 400 South, Oakland, California 94612, Defendant Honeywell International, Inc. (“Honeywell”) will move the Court for a protective order staying the time in which Defendants must respond to Plaintiffs’ outstanding discovery requests.

Honeywell moves this Court for a protective order staying the time in which Honeywell must respond to Plaintiffs’ outstanding discovery requests until after the resolution of Honeywell’s Motion to Stay Discovery and Honeywell’s Motion to Dismiss. There is good cause for a protective order because: (1) Honeywell has filed a dispositive motion; (2) the requested stay is for a short period of time; and (3) Plaintiffs will not be prejudiced by the stay.

Honeywell bases its motion on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the pleadings and papers on file herein, and on such other matters as may be presented to the Court at the time of the hearing.

Pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure, Honeywell certifies that on April 29, 2008, Joanna E. Herman, counsel for Honeywell, conferred with Mr. Thomas J. Brandi, counsel for Plaintiffs, in a good faith effort to resolve this dispute without Court action. (See Declaration of Joanna E. Herman in Support of Defendant Honeywell International, Inc.’s Motion for Protective Order (“Herman Decl.”) at ¶¶ 2-7.) At that time, Mr. Brandi indicated that after he reviewed Honeywell’s Motion to Stay Discovery and Motion to Dismiss, he would inform Honeywell whether Plaintiffs would agree to stay the outstanding discovery responses. (*Id.* at ¶ 4.) On April 29, 2008, Honeywell’s Motion to Dismiss and Motion to Stay Discovery were filed. (*Id.* at ¶ 5.) On April 30 and May 5, 2008, Ms. Herman contacted Mr. Brandi by e-mail to determine Plaintiffs’ position with respect to the present motion. (*Id.* at ¶¶ 6-7.) No response was received. (*Id.*) Thus, Honeywell hereby files this motion for a protective order.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion is filed in response to the Requests for Admission (RFAs) that Plaintiffs recently propounded upon Honeywell and the other Defendants. In light of Honeywell's pending Motion to Dismiss and Motion to Stay Discovery, Honeywell seeks a protective order for the limited purpose of staying the RFA responses, and any other discovery Plaintiffs may serve, until after the resolution of the pending motions. Good cause exists for the protective order, because Honeywell's Motion to Dismiss is potentially dispositive of the entire case, the requested stay is for a short period of time, and Plaintiffs will not be prejudiced by the stay.

II. STATEMENT OF FACTS

This case arises from the crash of a United States Army Special Operations Aviation Regiment ("SOAR") MH-47E Chinook helicopter, serial number 92-00472 (the "subject helicopter"), in the early morning hours of February 18, 2007, in the Shahjoi District of the Zabul Province in Afghanistan (the "Accident"). The Accident took the lives of eight military personnel who died in the line of duty, as well as injuring fourteen military personnel.

Plaintiffs sued Honeywell, The Boeing Company, Goodrich Corporation, BF Goodrich Aerospace, Chandler Evans Control Systems and General Electric¹ seeking damages for wrongful death, bodily injuries and loss of consortium based on theories of negligence, strict product liability, and breach of express and implied warranty. Because the nature of the Accident upon which Plaintiffs' complaint is based involves political questions dedicated to the executive and/or legislative branches, on April 29, 2008, Honeywell moved for dismissal of the complaint under the political question doctrine. At the same time, Honeywell moved for a stay of all discovery pending the resolution of the Motion to Dismiss.

On or about April 17, 2008 Plaintiffs' counsel, Thomas J. Brandi, sent a letter to counsel for Honeywell, Boeing, and Goodrich Pump and Engine Control Systems requesting the parties to meet and confer on the scheduling of depositions for the custodian of records for each Defendant.

¹ Plaintiffs have voluntarily dismissed General Electric. (Docket No. 33)

No depositions have actually been noticed. On April 22, 2008, Plaintiffs served Requests for Admission (RFAs) on each Defendant.

III. THERE IS GOOD CAUSE TO GRANT A PROTECTIVE ORDER IN THIS CASE

Rule 26(c) of the Federal Rules of Civil Procedure authorizes courts for “good cause” to issue a protective order to stay discovery. Fed. R. Civ. P. 26(c)(1); *Spencer Trask Software & Info. Servs. v. RPost Int’l*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002). Although a stay is not automatic, “[g]ood cause may be shown where a party has filed a dispositive motion, the stay is for a short period of time, and the opposing party will not be prejudiced by the stay.” *Spencer*, 206 F.R.D. at 368; *see also In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 321 (N.D. Cal. 2007) (“District courts have broad discretion to stay discovery pending the resolution of a potentially dispositive motion, including a motion to dismiss.”); *Little v. Seattle*, 863 F.2d 681, 685 (9th Cir. 1988); *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984). Here, good cause exists, because Honeywell has filed a dispositive motion that has a high likelihood of success, the requested stay of discovery will last only until the motion to dismiss is decided, and Plaintiffs will not be prejudiced by the stay. A stay of the RFA responses is therefore warranted.

A. The Motion To Dismiss Has A High Likelihood Of Success

Honeywell filed its Motion to Dismiss, pursuant to Rule 12(b)(1), on April 29, 2008. As described in the Motion to Stay Discovery that accompanied the Rule 12(b)(1) motion, there is a high likelihood of Plaintiffs’ complaint being dismissed as nonjusticiable under the political question doctrine. (*See* Motion to Stay Discovery at 5-8.) Consequently, responses to Plaintiffs’ RFAs should be stayed pending the resolution of the Motion to Dismiss.

B. The Requested Stay Is For A Short Period Of Time

Honeywell requests that the stay to respond to the RFAs be in place until a reasonable period of time after the Motion to Dismiss and Motion to Stay Discovery are decided. These two motions are scheduled for oral argument on June 19, 2008 at 2:00 p.m. Should the Motion to Dismiss be denied, the RFA responses would be due, at most, within 30 days following denial. Thus, the length of the requested stay is on the order of two to three months, depending on the

1 timing of the Court's order following the June 19, 2008 oral argument. Such a short stay supports
 2 the entry of a protective order to avoid unnecessary expenditure of resources. Fed. R. Civ. P.
 3 26(c).

4 **C. Plaintiffs Will Not Be Prejudiced By A Stay**

5 This case is in its infancy, and Plaintiffs will not be prejudiced by a short stay of discovery
 6 pending the resolution of the Motion to Dismiss. *See In re First Constitution Shareholders Litig.*,
 7 145 F.R.D. 291, 294 (D. Conn. 1991) (granting defendants' motion for a stay of discovery after
 8 finding there would be no prejudice to plaintiff, "which will have ample time [if the motion to
 9 dismiss is denied] to take discovery on the merits of its claims") (quotation marks omitted). The
 10 U.S. Army investigation regarding the cause of the Accident is still ongoing. Moreover, the
 11 earliest this case will proceed to trial is November 2009 (and likely later), with discovery to be
 12 conducted for at least a year.

13 In addition, it is appropriate for a court to stay discovery pending the disposition of a
 14 motion to dismiss, when discovery is not required to resolve any factual issues raised in the Rule
 15 12(b) motion. *Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir. 1987). Honeywell's Motion to
 16 Dismiss raises no disputed factual issues, and Plaintiffs will not be harmed or prejudiced by a
 17 short stay of discovery while that motion is resolved. Indeed, a stay in the RFA responses will
 18 potentially avoid unnecessary burden and expense, because the discovery will become moot if the
 19 Motion to Dismiss is granted. *See, e.g., Atlantic States Legal Found., Inc. v. Tyson Foods, Inc.*,
 20 897 F.2d 1128, 1131 (11th Cir. 1990) (granting motion to stay discovery on the merits until
 21 motion to dismiss was resolved). Thus, while the Motion to Dismiss is pending, the burden and
 22 expense of the propounded discovery outweigh any benefit to Plaintiffs. *See* Fed. R. Civ. P.
 23 26(b)(2)(C)(iii).

24 **D. Honeywell Need Not Respond To Plaintiffs' Discovery Requests While** 25 **This Motion Is Pending**

26 Courts in the Ninth Circuit treat the filing of a motion for a protective order to stay
 27 discovery as a *de facto* stay of any outstanding responses. *See, e.g., Skellerup Indus. v. City of*
 28 *Los Angeles*, 163 F.R.D. 598, 600 (C.D. Cal. 1995) (where defendants sought protective order to

1 stay discovery in light of pending motion to dismiss, responses to existing discovery requests
2 were not due until after court ruled on motion to stay); *Vivendi, S.A. v. T-Mobile USA, Inc.*, No.
3 C06-1524JLR, 2007 U.S. Dist. LEXIS 28710, *3 (W.D. Wash. Apr. 18, 2007) (same); *White v.*
4 *Am. Tobacco Co.*, 125 F.R.D. 508, 510 (D. Nev. 1989) (same). Thus, Honeywell believes it
5 should not be required to respond to the RFAs, or any other discovery that Plaintiffs may
6 propound, until the Court has ruled on the pending motions to dismiss and motion to stay
7 discovery.²

8 IV. CONCLUSION

9 For the foregoing reasons, Honeywell requests that the Court enter a protective order
10 staying the responses to the propounded discovery until a ruling is made on Honeywell's Motion
11 to Dismiss and Motion to Stay Discovery.

12 Dated: May 6, 2008

MORRISON & FOERSTER LLP

13 By: /s/ James W. Huston

14 James W. Huston

15 Attorneys for Defendant
16 HONEYWELL INTERNATIONAL INC.

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26 ² Honeywell is also not required to specifically move for a protective order regarding any
27 depositions, because despite Plaintiffs' April 17, 2008 correspondence, no deposition notices
28 have been served upon Honeywell.

CERTIFICATE OF SERVICE

I, James W. Huston, hereby certify that on May 6, 2008, I caused to be electronically filed a true and correct copy of the attached **DEFENDANT HONEYWELL INTERNATIONAL INC.'S NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record for Plaintiffs:

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I also served the following party by overnight mail [Fed. Rule Civ. Proc. rule 5(b)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 12531 High Bluff Drive, Suite 100, San Diego, California, 92130-2040 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison &

1 Foerster LLP's business practice the document(s) described above will be deposited in a box or
 2 other facility regularly maintained by UPS or delivered to an authorized courier or driver
 3 authorized by UPS to receive documents on the same date that it (they) is are placed at
 Morrison & Foerster LLP for collection.

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10 Executed at San Diego, California, on May 6, 2008.

12 MORRISON & FOERSTER LLP

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